

** E-filed November 4, 2010 **

1 Ronald J. Schutz, (*Pro Hac Vice* pending), RJSchutz@rkmc.com
 2 Richard M. Martinez, (*Pro Hac Vice*), RMMartinez@rkmc.com
 3 Sang Young A. Brodie, (*Pro Hac Vice*), SYBrodie@rkmc.com
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
 4 2800 LaSalle Plaza, 800 LaSalle Avenue
 Minneapolis, MN 55402
 Telephone: (612) 349-8500
 Facsimile: (612) 339-4181

5
 6 David Martinez, (CA Bar No. 193183), DMartinez@rkmc.com
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
 7 2049 Century Park East, Suite 3400
 Los Angeles, CA 90067-3208
 Telephone: (310) 552-0130
 Facsimile: (310) 229-5800

8
 9 Attorneys for Plaintiff,
 TV INTERACTIVE DATA CORPORATION

10
 11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

12 TV INTERACTIVE DATA CORPORATION, a
 13 California corporation,

14 Plaintiff,

15 v.

16 SONY CORPORATION; SONY COMPUTER
 17 ENTERTAINMENT INC.; SONY COMPUTER
 ENTERTAINMENT AMERICA, INC.; SONY
 18 CORPORATION OF AMERICA; SONY
 ELECTRONICS, INC.; SAMSUNG ELECTRONICS
 CO., LTD.; SAMSUNG ELECTRONICS AMERICA,
 INC.; ROYAL PHILIPS ELECTRONICS N.V.;
 19 PHILIPS ELECTRONICS NORTH AMERICA
 CORPORATION; TOSHIBA CORPORATION;
 20 TOSHIBA AMERICA, INC.; TOSHIBA AMERICA
 CONSUMER PRODUCTS, L.L.C.; PANASONIC
 21 CORPORATION; PANASONIC CORPORATION OF
 NORTH AMERICA; VICTOR COMPANY OF JAPAN,
 LTD.; JVC AMERICAS CORP.; LG ELECTRONICS,
 INC.; LG ELECTRONICS U.S.A., INC.; ZENITH
 22 ELECTRONICS LLC; PIONEER CORPORATION;
 PIONEER ELECTRONICS (USA) INC.; SHARP
 23 CORPORATION; SHARP ELECTRONICS
 CORPORATION; FUNAI ELECTRIC CO., LTD;
 24 FUNAI CORPORATION, INC.; D&M HOLDINGS
 INC.; DENON ELECTRONICS (USA), LLC,

25
 26 Defendants.

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 28 CASE NO. C 10-00475 JF

STIPULATION AND
~~[PROPOSED]~~ ORDER FOR
 DISCOVERY OF HARD COPY
 AND ELECTRONICALLY
 STORED INFORMATION
AS AMENDED BY THE COURT

1 **A. ESI PRODUCTION.**

2 If electronic data are produced in TIFF format, the following applies:

3 1. The production format is 300 dpi single page black and white Group IV TIFFs
 4 with extracted text.

5 2. Metadata Fields. ESI productions of imaged data shall include the following
 6 metadata field information, as defined in Table A, if such metadata information is
 7 present in the document(s) being produced:

BEG_NO	ATTACH_RANGE	FILE_EXT	FILE_NAME
END_NO	TO	CC	BCC
HASH	SUBJECT	FROM	DATE_SENT
TIME_SENT			

11 TVI reserves the right to request discovery toward the identity of a file's custodian
 12 and/or information for the metadata fields CREATE_DATE, DATE_LAST_MOD,
 13 and TIME_LAST_MOD to the extent TVI has a reasonable belief that the
 14 custodian's identity and/or additional information for the metadata fields
 15 CREATE_DATE, DATE_LAST_MOD, and TIME_LAST_MOD are relevant or
 16 will lead to the discovery of admissible evidence. Defendants agree to consider
 17 any such discovery request but expressly reserve the right to object to or to provide
 18 the information in an alternative manner as appropriate under the circumstances.

19 3. Unique IDs. Each document should have a unique file name which will be the
 20 Bates number of that page or the range of the document. The Bates numbers must
 21 appear on the face of each page in the lower right corner (e.g., ABC0000001).

22 4. Text Files. For nonsearchable documents, a document-level text file should be
 23 provided in addition, except for documents maintained in non-convertible files.

24 5. Color. The parties will accommodate reasonable requests for production of
 25 specific images in color.

26 6. Native Format. The parties agreed to produce documents in native format for
 27 reasonable requests on a case-by-case basis.

28 / / /

7. TIFF productions will be produced with load files in Summation, Concordance, or Opticon format.

If electronic data are produced in native format, the following applies:

8. Documents produced in native format will be produced with a corresponding control number assigned to the original file name and confidentiality designation, if any, for each such native file. The control number may be affixed directly to files or produced in a separate document. The parties need not separately provide metadata associated with files produced in native format because it would require redundant production of information inherent in native files.

The following also applies to ESI productions:

9. Unique Documents/De-duplication Procedures. In the interest of saving production costs, the parties are not required to produce duplicates of electronic documents stored in different locations. Thus, the parties may only provide a single copy of a document although the document was distributed to multiple recipients. TVI reserves the right to request Defendants to disclose custodian information for particular documents.

10. Databases. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus, a party may opt to produce relevant and responsive information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static image format. To the extent that relevant and responsive reports or data tables derived from a database were also maintained in static form (e.g., as a PDF attachment or a hard copy in a file), those documents will be produced as static images consistent with the specifications for production of ESI or paper, as the case may be.

The parties agree to identify the specific databases, by name and platform or engine (e.g., Oracle, SQL), that contain the relevant and responsive information that parties produce.

1 11. Non-Convertible Files: Certain types of files such as system, program, video and
2 sound files may not be amenable to conversion into a useful document format and
3 are thus considered non-convertible files. Relevant and responsive non-
4 convertible files will be produced in their native format and a placeholder
5 containing the Bates number and confidentiality designation, if any, will also be
6 provided. Defendants may also choose to produce non-convertible files in native
7 format with a corresponding control number assigned to the original file name and
8 confidentiality designation, if any, for each such native file. The control number
9 may be affixed directly to files or produced in a separate document.

10 12. Parent-Child Relationships. The parties will make reasonable efforts to preserve
11 parent-child relationships (the association between an attachment and its parent
12 document).

13 **B. HARD-COPY PRODUCTION.**

14 Hard-copy documents should be provided in the following format:

15 1. A standard searchable document format agreed to amongst the parties or TIFF
16 images, for example, 300 dpi single page black and white Group IV TIFFs.

17 2. Color. The parties will accommodate reasonable requests for production of
18 specific images in color.

19 3. Unique IDs. Each image should have a unique file name that will be the Bates
20 number of that page. The Bates number must appear on the face of the image in
21 the lower right corner (*e.g.*, ABC0000001).

22 4. Unitizing of Documents. When scanning paper documents, distinct documents
23 should not be merged into a single record, and single documents should not be
24 split into multiple records (*i.e.*, paper documents should be logically unitized).
25 The parties will make their best efforts to have their vendors unitize documents
26 correctly and will commit to address situations where there are improperly unitized
27 documents.

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1 5. Database Load Files/Cross-Reference Files. Documents should be provided with
2 document management load files, such as load files in Summation, Concordance,
3 or Opticon format.

4 6. Parent-Child Relationships. The parties agree to make reasonable efforts to
5 preserve parent-child relationships (the association between an attachment and its
6 parent document).

7 7. Objective Coding Fields. The following objective coding fields should be
8 provided to the extent determinable: (i) Beginning Bates Number; (ii) Ending
9 Bates Number; and (iii) Attachment Range Bates Numbers.

10 8. Metadata. Hard copy documents do not contain metadata.

11 9. TVI reserves the right to request custodian information for documents produced
12 under this provision. Defendants agree to consider any such discovery request but
13 expressly reserve the right to object to or to provide the information in an
14 alternative manner as appropriate under the circumstances.

15 10. OCR. OCR text files are not required for hard-copy documents. The receiving
16 party may OCR hard-copy documents at its own expense.

17 C. **MISCELLANEOUS PRODUCTION ITEMS.**

18 1. Production Labels. The parties agree to attach a label to each piece of media
19 containing production data. The label will provide the following information:

20 **Party v. Party** (case name)

21 **Case No. 000000** (case number)

22 **Month, Day, Year** (date production was created on the disk)

23 **Volume Number**

24 **Bates Range**

25 **Confidential Designation** (if necessary)

26 2. Production Media. Documents will be produced on CD-ROM or DVD disks or on
27 portable hard drives.

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1 **D. ACCESSIBLE AND INACCESSIBLE ESI.**

2 The parties agree to comply Rule 26(b)(2)(B) of the Federal Rules of Civil Procedure
3 regarding accessible and inaccessible ESI. The parties agree that the circumstances of this
4 case do not warrant the preservation, review, or production of ESI that is not reasonably
5 accessible because it is unlikely that significant relevant information would be located in
6 those sources that is not otherwise available in reasonably accessible sources. Examples
7 of not reasonably accessible ESI may include:

- 8 • Backup Tapes
- 9 • Voicemail
- 10 • Instant Messaging
- 11 • Legacy Data
- 12 • Residual, fragmented, damaged, permanently deleted, slack and unallocated
13 data
- 14 • Handheld PDA-type devices
- 15 • USB Flash Drives/Jump Drives
- 16 • Handheld PDA-type devices that operate independent of and/or are
17 unsynchronized with a network

18 **E. RIGHT TO REQUEST ADDITIONAL INFORMATION.**

19 The agreements set forth herein are without prejudice to the right of a requesting party to
20 request additional information about specific ESI, including sources of ESI previously identified
21 as "inaccessible ESI" in Section D.2., if that party can demonstrate that material, relevant, and
22 responsive information that is not otherwise cumulative of information already produced can only
23 be found through such additional efforts. The parties will negotiate in good faith with regard to
24 whether such additional efforts are reasonably required and, if so, who should bear the cost, with
25 the Court to resolve such disputes if agreement cannot be reached.

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1 **F. INADVERTENT PRODUCTION OF DOCUMENTS.**

2 1. No Waiver of Privilege: The inadvertent production or delivery of any materials
3 during discovery in this action shall be without prejudice to any claim that such material is
4 protected by any legally cognizable privilege or evidentiary protection including, but not limited
5 to, the attorney-client privilege or the work product immunity. No party shall be held to have
6 voluntarily waived any rights by inadvertent production, so long as that party has complied with
7 the conditions set forth in this order and stipulation. However, a receiving party may assert that
8 there has been a waiver if it can demonstrate that the "reasonableness" standard set forth in Rule
9 502(b) of the Federal Rules of Evidence has not been satisfied.

10 2. Procedure for Asserting Privilege. If a producing party inadvertently produces any
11 protected or privileged materials without intending to waive the claim of protection or privilege
12 associated with such a material (the "Inadvertently Produced Privileged Documents"), the
13 producing party must notify the receiving party that such materials were inadvertently produced
14 and should have been withheld as protected or privileged within ten days of discovering the
15 inadvertent production. Notice must be in writing, unless it is an oral notice delivered at a
16 deposition. If the notice is delivered orally at a deposition, the notifying party must follow up
17 with a written notice within three days. All requests and notifications must be specific enough to
18 identify and locate the privileged information

19 3. Procedure Upon Receiving Notice: Upon receiving notice, the receiving party
20 must return or destroy the specified material and all altered and unaltered hard and electronic
21 copies in the receiving party's possession within ten days. The receiving party must promptly
22 certify that the materials have been returned or destroyed. In addition, the producing party will
23 send a replacement disk containing all non-privileged documents that were contained on the
24 original production disk. The producing party shall add the subject document to its privilege log
25 and provide the updated Privilege Log to the receiving party. If the Inadvertently Produced
26 Privilege Document requires redaction only, the producing party shall within thirty (30) days of
27 the Notice of Recall, provide to the receiving party a redacted version of the document and an
28

1 updated privilege log by submitting a replacement disk containing the original production with
 2 the redacted documents included.

3 4. Procedure for Contesting Privilege: The return of an Inadvertently Produced
 4 Privilege Document does not preclude the receiving party from disagreeing with the designation
 5 of the document as privileged or as redacted and re-produced and bringing a Motion to Compel
 6 its production pursuant to the Federal Rules of Civil Procedure and the terms of this stipulation.
 7 The receiving party shall have twenty days from receipt of the notice of inadvertent production to
 8 notify the producing party that it is reserving the right to object to the claim of privilege. After
 9 deciding which Inadvertently Produced Privileged Documents it intends to contest a claim of
 10 privilege, the receiving party shall notify the producing party in writing of its objections to the
 11 claims of privilege for each Inadvertently Produced Privilege Document and the grounds for the
 12 objections. To be clear, a receiving party may challenge claims of privilege over Inadvertently
 13 Produced Privilege Documents on a case-by-case basis or wait to challenge claims of privilege
 14 over Inadvertently Produced Privilege Documents collectively. The parties will attempt to
 15 resolve any such challenges by meeting and conferring. In the event that such a challenge is not
 16 resolved through the meet and confer process, the receiving party may file a motion to compel
 17 disclosure and production of the Inadvertently Produced Privileged Document(s). In response to
 18 any such motion to compel, the producing party shall submit all challenged Inadvertently
 19 Produced Privilege Documents under seal and the grounds for the asserted privilege or protection
 20 to the Court for a determination of the claim of privilege or protection.

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(in voice to voice dialogue; other forms of
 communication are not sufficient)

24 (in accordance with the procedures and
 25 standards set forth in Civil Local Rule 79-5 and
 26 General Order 62)

1 I, Sang Young A. Brodie, the filer of this document attest that concurrence in the filing of
2 this document has been obtained from each of the signatories below.
3

4 DATED: October 19, 2010

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

6 By: /s/ Sang Young A. Brodie
7 Ronald J. Schutz (*Pro Hac Vice* pending)
Richard M. Martinez (*Pro Hac Vice*)
Sang Young A. Brodie (*Pro Hac Vice*)
8 **ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**
800 LaSalle Avenue, 2800 LaSalle Plaza
9 Minneapolis, MN 55402
Telephone: (612) 349-8500
Facsimile: (612) 339-4181

11 David Martinez, (CA Bar No. 193183),
12 **ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**
12 2049 Century Park East, Suite 3400
13 Los Angeles, CA 90067-3208
Telephone: (310) 552-0130
Facsimile: (310) 229-5800

14 **ATTORNEYS FOR PLAINTIFF**
15 **TV INTERACTIVE DATA CORPORATION**

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
MINNEAPOLIS

1 DATED: October 19, 2010

MORRISON & FOERSTER LLP

2 By: /s/ Rick S. Ballinger

3 Karl J. Kramer

4 Rick S. Ballinger

MORRISON & FOERSTER LLP

5 755 Page Mill Road

6 Palo Alto, CA 94304

Telephone: (650) 813-5775

Facsimile: (650) 494-0792

7 Jack W. Londen

MORRISON & FOERSTER LLP

8 Shin-Marunouchi 1-Chome

9 Tokyo, Chiuoda-ku 100-6529, Japan

Telephone: +81-3-3214-6522

ATTORNEYS FOR DEFENDANTS D&M HOLDINGS INC.; D&M HOLDINGS US, INC.; AND DENON ELECTRONICS (USA), LLC

13 DATED: October 19, 2010

BAKER & HOSTETLER, LLP

15 By: /s/ Kevin W. Kirsch

16 Kevin W. Kirsch

17 John F. Bennett

Matthew P. Hayden

David A. Mancino

BAKER & HOSTETLER, LLP

18 312 Walnut Street, Suite 3200

Cincinnati, OH 45202

19 Telephone: (513) 929-3499

Facsimile: (513) 929-0303

20 Hayes F. Michel

BAKER & HOSTETLER, LLP

21 12100 Wilshire Blvd.

Los Angeles, CA 90025

22 Telephone: (310) 979-8460

23 Facsimile: (310) 820-8859

ATTORNEYS FOR DEFENDANTS FUNAI ELECTRONIC CO. LTD. AND FUNAI CORPORATION, INC.

1 DATED: October 19, 2010

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HOWREY LLP

By: /s/ Jason T. Anderson

Jason T. Anderson

Christina M. Finn

HOWREY LLP

1950 University Ave./4th Floor

East Palo Alto, CA 94303

Telephone: (650) 798-3500

Facsimile: (650) 798-3600

Alan Grimaldi

Brian Rosenthal

HOWREY LLP

1299 Pennsylvania Ave., N.W.

Washington, DC 20004

Telephone: (202) 783-0800

Facsimile: (202) 383-6610

**ATTORNEYS FOR DEFENDANTS ROYAL
PHILIPS ELECTRONICS N.V. AND PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION**

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
MINNEAPOLIS

1 DATED: October 19, 2010

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MORRISON & FOERSTER LLP

By: /s/ Karen Hagberg

Karen Hagberg

Sherman W. Kahn

Hui Liu

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, NY 10104

Telephone: (212) 468-8032

Facsimile: (212) 468-7900

**ATTORNEYS FOR DEFENDANTS PIONEER
CORPORATION AND PIONEER
ELECTRONICS (USA) INC.**

DATED: October 19, 2010

MORRISON & FOERSTER LLP

By: /s/ Karen Hagberg

Karen Hagberg

Sherman W. Kahn

Hui Liu

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, NY 10104

Telephone: (212) 468-8032

Facsimile: (212) 468-7900

**ATTORNEYS FOR DEFENDANTS SHARP
CORPORATION AND SHARP
ELECTRONICS CORPORATION**

1 DATED: October 19, 2010

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**LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, L.L.P.**

By: /s/ Gregory S. Gewritz

Gregory S. Gewritz

Jonathan A. David

Bryan J. Sommese

**LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, L.L.P.**

600 South Avenue West

Westfield, NJ 07090

Telephone: (908) 654-5000

Facsimile: (908) 654-7866

Duane M. Geck

Philip Barilovits

SEVERSON & WERSON

One Embarcadero Center, Suite 2600

San Francisco, CA 94111

Telephone: (415) 677-5501

Facsimile: (415) 596-0439

**ATTORNEYS FOR DEFENDANTS SONY
CORPORATION; SONY COMPUTER
ENTERTAINMENT INC.; SONY COMPUTER
ENTERTAINMENT AMERICA LLC; SONY
CORPORATION OF AMERICA; AND SONY
ELECTRONICS, INC.**

DATED: October 19, 2010

DLA PIPER LLP

By: /s/ Ronald L. Yin

Ronald L. Yin

Mark D. Fowler

Gerald T. Sekimura

Sal Lim

Erik R. Fuehrer

DLA PIPER LLP

2000 University Ave.

East Palo Alto, CA 94303

Telephone: (650) 833-2437

Facsimile: (650) 687-1208

**ATTORNEYS FOR DEFENDANTS TOSHIBA
CORPORATION; TOSHIBA AMERICA, INC.;
AND TOSHIBA AMERICA CONSUMER
PRODUCTS, L.L.C.**

1 DATED: October 19, 2010

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ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ William H. Wright

Steven J. Routh

Sten A. Jensen

Trevor C. Hill

T. Vann Pearce, Jr.

ORRICK, HERRINGTON & SUTCLIFFE LLP

1152 15th Street, NW

Washington, DC 20005

Telephone: (202) 339-8696

Facsimile: (202) 339-8500

William H. Wright

ORRICK, HERRINGTON & SUTCLIFFE LLP

777 South Figueroa St., Suite 3200

Los Angeles, CA 90017

Telephone: (213) 612-2478

**ATTORNEYS FOR DEFENDANTS VICTOR
COMPANY OF JAPAN, LTD. AND JVC
AMERICAS CORP.**

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
MINNEAPOLIS

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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DATED: November 4, 2010

Honorable Howard R. Lloyd
United States Magistrate Judge

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TABLE A. METADATA FIELDS

Field Name	Description/ Comments
BEG_NO	Bates number associated with the first page of a document.
END_NO	Bates number associated with the last page of a document.
ATTACH_RANGE	Attachment range for parent and children. The range should start with the BEG_NO of the parent and end with the END_NO of the last child.
FILE_EXT	File extension of native file (e.g., XLS, DOC)
FILE_NAME	Original file name of native file. Contains subject of email message for e-mail records.
HASH	The Hash value or “de-duplication key” assigned to a document. Parties will use MD5 Hash value for this unique identifier. PID’s for email families should also be preserved.
SUBJECT	Information from the Subject line of the e-mail message
FROM	Author of e-mail message
TO	Recipients of the e-mail message
CC	Recipient of Carbon Copies of the e-mail message
BCC	Recipient of blind carbon copies of the e-mail message
DATE_SENT	Sent date of an e-mail message. Must be in mm/dd/yyyy format.
TIME_SENT	Sent time of an e-mail message. GMT/CST/time is was created in/Needs to be in military format.

PROOF OF SERVICE

1 STATE OF MINNESOTA)
 2) ss.
 3 COUNTY OF HENNEPIN)

4 I am employed in the County of Hennepin, State of Minnesota. I am over the age of 18
 5 and not a party to the within action; my business address is 800 LaSalle Avenue 2800 LaSalle
 6 Plaza, Minneapolis Minnesota 55402.

7 On October 20, 2010 I served the foregoing document described as **STIPULATION**
 8 **AND [PROPOSED] ORDER FOR DISCOVERY OF HARD COPY AND**
ELECTRONICALLY STORED INFORMATION on the interested parties in this action by
 placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

See Attached Service List

9

10 **BY MAIL:** I caused such envelope to be deposited in the mail at Minneapolis,
 11 Minnesota. The envelope was mailed with postage thereon fully prepaid.
 I am "readily familiar" with this firm's practice of collection and processing
 12 correspondence for mailing. It is deposited with U.S. postal service on that same day in
 the ordinary course of business. I am aware that on motion of party served, service is
 13 presumed invalid if postal cancellation date or postage meter date is more than one day
 after date of deposit for mailing in affidavit.

14

15 **BY FEDERAL EXPRESS - OVERNIGHT:** I caused such envelope to be deposited in
 a box or other facility regularly maintained by Federal Express in an envelope or package
 16 designated by Federal Express with delivery fees paid.

17

18 **BY FACSIMILE:** I served a true copy of the document(s) described on all parties to this
 action by facsimile transmission, and the transmission was reported as complete and
 without error. Facsimile transmissions were sent and addressed as stated above.

19

20 **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the
 offices of the addressees.

21

22 **BY E-MAIL:** I served a true copy of the document(s) on all parties to this action via e-
 mail transmission. E-mail transmissions were sent and addressed as stated above.

23

24 (Federal) I declare that I am employed in the office of a member of the bar of this court at
 whose direction service was made.

25 Executed on October 20, 2010 at Minneapolis, Minnesota.

26

27

28

Michele M. Tacheny
 Michele M. Tacheny

SERVICE LIST**TV Interactive Data Corporation v. Sony, et al.**

U.S.D.C. Northern District of California Case No. 10-CV-00475 EMC

Karl J. Kramer (*registered ECF user*)
 Richard S. Ballinger (*registered ECF user*)
 Morrison & Foerster LLP
 755 Page Mill Road
 Palo Alto, CA 94304
 E-mail: kkramer@mofo.com
 E-mail: rballinger@mofo.com

Karl J. Kramer (*registered ECF user*)
 Richard S. Ballinger (*registered ECF user*)
 Morrison & Foerster LLP
 755 Page Mill Road
 Palo Alto, CA 94304
 E-mail: kkramer@mofo.com
 E-mail: rballinger@mofo.com

Jack W. Londen (*registered ECF user*)
 Morrison & Foerster LLP
 Shin-Marunouchi 1-Chome
 Tokyo, Chiyoda-ku 100-6529, Japan
 E-mail: jlonden@mofo.com

Jack W. Londen (*registered ECF user*)
 Morrison & Foerster LLP
 Shin-Marunouchi 1-Chome
 Tokyo, Chiyoda-ku 100-6529, Japan
 E-mail: jlonden@mofo.com

D&M Holdings Inc.

D&M Holdings US Inc.; and
Denon Electronics (USA), LLC

Kevin W. Kirsch (*registered ECF user*)
 John F. Bennett (*registered ECF user*)
 Matthew P. Hayden (*registered ECF user*)
 David A. Mancino (*registered ECF user*)
 Baker & Hostetler LLP
 312 Walnut Street
 Suite 3200
 Cincinnati, OH 45202
 E-mail: kkirsch@bakerlaw.com
 E-mail: jbennett@bakerlaw.com
 E-mail: mhayden@bakerlaw.com
 E-mail: dmancino@bakerlaw.com

Jason Anderson (*registered ECF user*)
 Christina Finn
 Howrey LLP
 1950 University Ave.
 Fourth Floor
 East Palo Alto, CA 94303
 E-mail: Anderson@howrey.com
 E-mail: FinnC@howrey.com

Hayes F. Michel (*registered ECF user*)
 Baker & Hostetler LLP
 12100 Wilshire Blvd.
 Los Angeles, CA 90025
 E-mail: hmichel@bakerlaw.com

Alan Grimaldi
 Brian Rosenthal (*registered ECF user*)
 Howrey LLP
 1299 Pennsylvania Ave. NW
 Washington, DC 20004
 E-mail: grimaldia@howrey.com
 E-mail: rosenthalb@howrey.com

Funai Electric Co. Ltd.; and
Funai Corporation, Inc.

Philips Electronic North America
Corporation; and
Royal Philips Electronics N.V.

1 Karen I. Hagberg (*registered ECF user*)
 2 Sherman W. Kahn (*registered ECF user*)
 3 Hui Liu (*registered ECF user*)
 4 Morrison & Foerster LLP
 5 1290 Avenue of the Americas
 6 New York, NY 10104
 E-mail: khagberg@mofo.com
 E-mail: skahn@mofo.com
 E-mail: hliu@mofo.com

Gregory G. Gewirtz (*registered ECF user*)
 Jonathan A. David (*registered ECF user*)
 Bryan J. Sommese (*registered ECF user*)
 Lerner David Littenberg Krumholz & Mentlik
 600 South Ave. West
 Westfield, NJ 07090
 E-mail: ggewirtz@ldlkm.com
 E-mail: jdavid@ldlkm.com
 E-mail: bsommese@ldlkm.com

7 Bryan Wilson
 8 Morrison & Foerster LLP
 9 755 Page Mill Road
 Palo Alto, CA 94304
 E-mail: BWilson@mofo.com

Duane M. Geck
 Philip Barilovits (*registered ECF user*)
 Severson & Werson
 One Embarcadero Center
 Suite 2600
 San Francisco, CA 94111
 E-mail: dmg@severson.com
 E-mail: pb@severson.com

10 *Pioneer Corporation; and*
 11 *Pioneer Electronics (USA) Inc.*
 12 Karen I. Hagberg (*registered ECF user*)
 13 Sherman W. Kahn (*registered ECF user*)
 14 Hui Liu (*registered ECF user*)
 15 Morrison & Foerster
 16 1290 Avenue of the Americas
 17 New York, NY 10104
 E-mail: khagberg@mofo.com
 E-mail: skahn@mofo.com
 E-mail: hliu@mofo.com

Sony Corporation;
Sony Computer Entertainment Inc.;
Sony Computer Entertainment America, Inc.;
Sony Corporation of America; and
Sony Electronics, Inc.

18 Bryan Wilson
 19 Morrison & Foerster
 20 755 Page Mill Road
 Palo Alto, CA 94304
 E-mail: BWilson@mofo.com

Ronal L. Yin (*registered ECF user*)
 Mark D. Fowler (*registered ECF user*)
 Gerald T. Sekimura
 Sal Lim (*registered ECF user*)
 Erik R. Fuehrer (*registered ECF user*)
 DLA Piper LLP
 2000 University Ave.
 East Palo Alto, CA 94303
 E-mail: Toshiba-TVInteractive@dlapiper.com

21 *Sharp Corporation; and*
 22 *Sharp Electronics Corporation*

Toshiba Corporation;
Toshiba America, Inc.; and
Toshiba America Consumer Products, LLC

23
 24
 25
 26
 27
 28

1 Steven J. Routh
2 T. Vann Pearce (*registered ECF user*)
3 Sten A. Jensen
4 Trevor C. Hill (*registered ECF user*)
5 Orrick Herrington & Sutcliffe LLP
6 1152 15th St. NW
7 Columbia Center
8 Washington, DC 20005
9 E-mail: srouth@orrick.com
10 E-mail: vpearce@orrick.com
11 E-mail: sjensen@orrick.com
12 E-mail: thill@orrick.com

8
9 William H. Wright (*registered ECF user*)
10 Orrick Herrington & Sutcliffe LLP
11 777 So. Figueroa St./Suite 3200
12 Los Angeles, CA 90017
13 E-mail: wwright@orrick.com

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
12 *Victor Company of Japan, Ltd.; and*
13 *JVC Americas Corp.*